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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1969

## No. 729

DONALD BACHELLAR, ET AL.,
*Petitioners,*

v.

STATE OF MARYLAND,
*Respondent.*

ON WRIT OF CERTIORARI TO THE COURT OF SPECIAL APPEALS OF MARYLAND

## BRIEF FOR RESPONDENT

### OPINIONS BELOW

The opinion of the Court of Special Appeals of Maryland (A. 171-181) entered on April 15, 1968, is reported in 3 Md. App. 626, 240 A. 2d 623. The Order of the Court of Appeals of Maryland denying certiorari to review the judgment of the Court of Special Appeals was rendered without an Opinion. It is unreported (A. 182).

### JURISDICTION

The jurisdictional requisites are adequately set forth in Petitioners' brief.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Amendment I to the Constitution of the United States of America:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and petition the Government for a redress of grievances."

2. Amendment XIV to the Constitution of the United States of America, Section 1:

> "All persons born or naturalized in the United States and subject to the Jurisdiction thereof, are citizens of the United States and of the States wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

3. The italicized portion of Article 27, § 123 of the Annotated Code of Maryland (1967 Replacement Volume):

> "*Every person who shall be found* drunk, or *acting in a disorderly manner to the disturbance of the public peace, upon any public street or highway, in any city, town or county in this State*, or at any place of public worship or public resort or amusement in any city, town or county of this State, or in any store during business hours, or in any elevator, lobby or corridor of any office building or apartment house having more than three separate dwelling units in any city, town or county of this State, and any person who drinks, or has in his possession, any intoxicating beverages while in attendance as a spectator or otherwise, at any place where an elementary school, junior high school or high school athletic contest is taking place, *shall be deemed guilty of a misdemeanor;* and upon conviction thereof

shall be subject to a fine of not more than fifty dollars, or be confined in jail for a period of not more than sixty days or be both fined and imprisoned in the discretion of the court. Habitual offenders may be fined not more than one hundred dollars or committed to jail or the Maryland House of Correction for not more than six months. An habitual offender is a person who shall have been convicted under the provisions of this section five (5) times in the preceding twelve (12) months. The trial magistrates of the respective counties of this State shall have concurrent jurisdiction over such offense with the Circuit Court for their respective counties." (Emphasis supplied.)[1]

## QUESTIONS PRESENTED

1. Petitioners, after being ejected from an Army Recruiting Office at the close of business hours where they were performing a sit-in, remained lying or sitting on a public sidewalk. A sidewalk blockage resulted and when petitioners refused several police requests to move, they were arrested. Petitioners were convicted of violating a Maryland statute which prohibited "acting in a disorderly manner to the disturbance of the public peace." This statute has been interpreted to mean (1) "doing or saying, or both, of that which offends, disturbs, incites, or tends to incite a number of people gathered in the same area," or (2) refusing "to obey a policeman's command to move on when not to do so may endanger the public peace." Is this statute as construed by the highest court of Maryland, unconstitutional?

2. For a period of two hours a detail of Baltimore City Police officers permitted 35-40 peaceful Anti-Vietnam

[1] The statute is quoted as it read on the date of this offense March 28, 1966. Maryland Laws of 1968, Chapter 146, § 3, eliminated drunkenness as a crime in Maryland, and Chapter 666, § 1 enumerated in subsections the several disorderly conduct offenses, retaining instant proscription in subsection (c).

demonstrators to picket outside an Army Recruiting Office, located on an important traffic artery (U.S. Route 111, State Route 146) in a commercial section of the City of Baltimore, and protected them from unsympathetic spectators. At the 5 P.M. closing time, the six petitioners, who had been staging a "sit-in" inside the Army Recruiting Office, refused to leave and had to be physically removed by United States Marshals and police from the office to the sidewalk. Petitioners assumed sitting or prone positions on the 10-12-foot sidewalk and effectively blocked its passage to pedestrians and pickets, causing the picketing to cease and pedestrian traffic to back up and spill out onto the roadway of the traffic artery. Petitioners refused repeated requests by officers to move and were then arrested. On this record, could there be any basis for the contention that the disorderly conduct statute was applied to petitioners in violation of the First and Fourteenth Amendments?

3. Petitioners, relying on *Terminiello v. Chicago*, 337 U.S. 1, 93 L. ed. 1131, 69 S. Ct. 894 (1949), sought to have the trial court instruct the jury that petitioners could not be convicted of disorderly conduct solely because their political views and ideas induced a condition of unrest, dispute or anger in other people. The trial court refused this request for instructions, giving instead as advisory instructions, the accepted Maryland law regarding disorderly conduct. Did the trial court commit constitutional error in its charge to the jury?

## STATEMENT OF THE CASE

*Anti-Vietnam Demonstration at the United States Army Recruiting Office, 3328 Greenmount Avenue, Baltimore, Maryland, March 28, 1966, from 3 P.M. to 5 P.M. (including picketing, distribution of literature, the crowd reaction*

*and police activity). The conduct of Petitioners including sitting in at the Recruiting Office, their expulsion from the Recruiting Office, their blockage of the sidewalk and refusal to move and their arrest.*

Between 3 P.M. and 5 P.M. on March 28, 1966, a group of 30-40 persons demonstrated in a peaceful and orderly fashion on the sidewalk outside an Army Recruiting Office at 3328 Greenmount Avenue in Baltimore (A. 22, 37, 51, 80, 125). The demonstrators carried signs protesting the United States involvement in the Vietnam War (A. 37, 51, 79, 165, 167, 169), and some of the marchers distributed leaflets to people walking by (A. 50, 126). A detail of Baltimore police including an inspector, captain, lieutenant, sergeant and nine policemen from the Northern District plus additional officers from the Northeastern District, Traffic Division, an emergency car (Cruising Patrol No. 11), were at or near the scene (A. 37, 49). Photographs taken by Police Crime Laboratory representatives depict the orderly demonstration, the area of the 10-12 foot sidewalk utilized by the pickets, the signs displayed, the commercial neighborhood which was the site of the demonstration, and the police protection afforded picketers (A. 39, 45, 90, 163-170).

With the exception of an arrest of a bystander made by police when eggs were thrown at the picketers, the prosecution and defense testimony disclosed that the demonstration was peaceful and orderly (A. 50). The police were there to protect the picketers-demonstrators, which included women, children and one small child in a stroller (A. 53, 79).

The Petitioners arrived outside the Recruiting Office approximately 3 P.M., at which time they joined the picketers marching on the sidewalk (A. 80, 102). Some 15

minutes later the six Petitioners left the picket line, entered the Recruiting Office, and with David Harding acting as spokesman, engaged the Recruiting Officer, Sergeant Grumley, in conversation and requested that Anti-Vietnam posters be displayed in the front window of the Recruiting Office (A. 22, 81, 102). The Recruiting Officer declined this request, informed Petitioners that his function was to furnish information to individuals seeking to enlist in the Army and requested Petitioners to leave. Petitioners refused and stated that they would remain within the office until the posters were displayed (A. 23, 102). Exhibit 7 depicts one poster offered by Petitioners (A. 168).

When the Recruiting Officer refused Petitioners' request, they sat on the couch and chairs in the office without interference from the office personnel. At 5 P.M., the normal closing time, the Recruiting Officer turned off the lights, lowered the shades on the front window and again asked Petitioners to leave, however they again refused to move (A. 23, 82). United States Marshal Udoff had been present at the Recruiting Office for two hours on instructions from the United States Attorney for the District of Maryland, showed Petitioners his identification and several times asked the Petitioners to leave but they refused (A. 25, 82). The Marshal informed Petitioners he was going to request the assistance of police in removing Petitioners from the office but Petitioners made no attempt to move (A. 26, 102). The Marshal, a Deputy Marshal and police testified Petitioners were escorted (A. 26, 32), picked up bodily (A. 28, 153), carried out (A. 37, 47, 76, 82, 102, 108), forced out (A. 29), walked to the door (A. 33) and deposited on the sidewalk. The testimony varied as to whether they were deposited in a standing, sitting or prone position.

Sergeant DiCarlo testified that after two Petitioners were placed on the sidewalk they tried "to crawl back in, in between the door and the door jam so the door couldn't be closed" (A. 38). The Sergeant identified the six Petitioners, stated that the large crowd that had been witnessing this demonstration started to gather around them when Petitioners remained on the sidewalk in a sitting position. A large crowd gathered, the Petitioners "were blocking free passage of the sidewalk" (A. 39), "the crowd started to get hostile" (A. 39), and on three occasions Sergeant DiCarlo asked Petitioners to get up and leave (A. 38, 39). Petitioners did not respond to the Sergeant, gave no indication that they would get up and Lieutenant DiPino, who was present at the scene, also asked them to get up and leave. Shouts of "Let us get to them, we'll take care of them" were heard from the crowd (A. 39). Two United States Marines among the on-lookers had to be held by the officers. These Marines and also Navy personnel who were present had to be sent across the street by the police away from the Petitioners (A. 39). The officer, referring to the crowd, testified: "It did start to get a little wild" (A. 39).

On the third occasion when Petitioners were requested to move and refused, they were told, "Gentlemen, if you don't get up and leave we're going to have to arrest you" (A. 69). The Petitioners had to be carried from the sidewalk to the patrol wagon after they were placed under arrest (A. 69).

Both Sergeant DiCarlo and Lieutenant DiPino were standing alongside Petitioners when they asked them to move (A. 72), and if the Petitioners had gotten up the law enforcement officers would have escorted them to their cars as was done to some of the other picketers (A.

74). Sergeant DiCarlo denied that any law enforcement officials were holding Petitioners while they were sitting in a circle (A. 76), as alleged by Petitioners Harding (A. 83) and Rudman (A. 103). Petitioners David Harding and Daniel Rudman denied hearing the officers tell them to get up (A. 83, 104), but admitted singing and noise could have prevented these requests being heard (A. 97). Testimony on this point was not elicited from Petitioner Wayne Heimbach (A. 152, 153).

Lieutenant DiPino testified that he was present when the Petitioners refused the United States Marshal's request to leave the Recruiting Office at 5 P.M., and assisted in removing the last of the six to the sidewalk (A. 44) where "he was put on his feet and he just laid down" (A. 47). He confirmed Sergeant DiCarlo's testimony relating to the temper of the crowd of on-lookers, the blockage of the entire sidewalk and the protection afforded Petitioners by police (A. 45), the refusal of Petitioners to move (A. 63), the inability of pickets to continue their demonstration although they tried to picket but could not (A. 63). This officer related that one of the demonstrators was marching with "a couple of babies" which necessitated assigning an officer to insure the children did not get hurt (A. 63).

He estimated the crowd at 50-150, about 35 being picketers, spectators were saying, "Bomb Hanoi", approximately 8-10 law enforcement officers were on the sidewalk "trying to protect them so no one would come in on them" (A. 46, 61). The Petitioners refused to move, they started to sing (A. 45), the crowd was angry, one man said "Let me get to them, I'll bust him in the mouth" (A. 48). He heard Sergeant DiCarlo ask the Petitioners to move (A. 48), and he, Lieutenant DiPino, twice asked

Petitioners to move (A. 45) and said "If you don't get up you're under arrest" (A. 55). There was no possibility that the Petitioners did not hear him (A. 55), Petitioners "had ample time to get up. I gave them plenty of time to get up" (A. 56). The second time he told them to get up "I seen there could be violence" (A. 59). The picketers could not march because the six Petitioners did not get up (A. 57). "I asked them to get up and move. We didn't want to lock them up, we wanted them to get away, to clear the streets so people could walk. I asked them again. I said to my officers, 'Don't touch them, don't put a hand on them. If the wagon comes, they still refuse to move, we'll have to go'. In fact they wouldn't get up, we had to carry each one separately" (A. 59).

The testimony that Petitioners were arrested "to protect them from being hurt" was elicited during cross-examination of Lieutenant DiPino and his full answer at this point was: "Well, your Honor, from what I seen and I seen these men laying on the sidewalk where nobody could go through them, other people are moving in to do bodily harm, in my opinion it was disorderly conduct. We gave them ample time to move, to clear the sidewalk. They obstructed practically the length of the sidewalk from the recruiting office to the gutter and there is no one could get through. In fact, like I said before, when I seen the crowd closing in I arrested them also to protect them from being hurt" (A. 60).

There is a lack of consistency as to how long Petitioners remained in a sitting or prone position on the sidewalk. Estimates from law enforcement officers, witnesses, and Petitioners ranged from several minutes by Sergeant DiCarlo (A. 70, 71) to 15 minutes by the newspaper reporter Fogarty (A. 149). Police testified that Petitioners were requested on four occasions to get up and move (A.

69, 73). Petitioners and defense witnesses denied hearing these requests (A. 83, 96, 104, 115, 122, 126, 132), although they admitted that the singing and noise could have prevented these requests being heard (A. 97, 127, 129). Petitioners Harding and Rudman alleged they were "pushed down" when they attempted to rise from the sidewalk (A. 83, 92, 103), although Petitioner Harding admitted he did not see who placed a hand on his shoulder when he was in a sitting position and it could have been "one of my own pickets" (A. 93). Neither Harding nor Rudman saw any other petitioners restrained from being able to get up off the sidewalk (A. 94, 110), and Harding did not know why they didn't get up (A. 94). The newspaper reporter, a rebuttal witness, saw police talking to and making motions to at least two of the Petitioners but could not hear conversation because of the crowd noise (A. 144).

Officers of the Baltimore Police Department Crime Laboratory took pictures of the demonstration as it progressed (A. 39). These photographs were introduced as exhibits by the prosecution to show the peaceful picketing, the sidewalk blockage and the crowd spilling onto Greemount Avenue, a prominent traffic artery in the City of Baltimore, after ejection of Petitioners from the Recruiting Office and their blockage of the sidewalk (A. 163-170).

Testimony from prosecution and defense witnesses established that freedom to picket and distrbute leaflets was not impaired throughout the entire demonstration (A. 48, 120, 125, 130, 138).

The State's case consisted of evidence presented by the Army Sergeant assigned to the Recruiting Office, the United States Marshal and a Deputy, and two officers of the Baltimore City Police Department. The defense presented testimony from two defendants and five picketers, all of

whom were friends of the defendants (A. 115, 125, 130, 133). The State's rebuttal consisted of testimony from one newspaper reporter present at the scene, and in surrebuttal one additional defendant testified.

*History of the Proceedings*

On April 19, 1966, the six Petitioners were found guilty in the Municipal Court of Baltimore City, Criminal Division, of disorderly conduct under Maryland Code, Article 27, § 123, (1967 Replacement Volume). Each Petitioner was sentenced to a term of sixty (60) days and a fine of Fifty Dollars ($50.00) and costs (A. 5). On April 19, 1966, an appeal to the Criminal Court of Baltimore City was entered (A. 7).

After the Motion to Dismiss on the basis of a violation of First and Fourteenth Amendment rights was denied on June 8, 1966, a trial *de novo* before a jury followed and a guilty verdict resulted (A. 7, 8 and 159). At the conclusion of the State's case, Petitioners' Motion for Judgment of Acquittal, or for Dismissal on the Evidence, on the basis of insufficiency of the evidence and abridgment of First and Fourteenth Amendment Rights was denied (A. 9-11, 80). This motion was renewed and denied at the close of all the evidence (A. 153).

Petitioners submitted written Requests for Instructions I through VIII (A. 12-17). Instruction I asked that the jury be informed that Petitioners could not be convicted of disorderly conduct unless "they refused to obey a reasonable and lawful police order, clearly communicated to them". Instruction II asked that the jury be informed that such a police order is reasonable and lawful only if it is made to prevent an imminent public disturbance and if it is reasonably necessary in order to prevent such a disturbance. In-

struction III defined a "public disturbance" as physical violence or the attempt to use physical violence by one person against another, not simply anger or hostility or an episode of shouting, singing or name-calling not calculated to spill over into imminent violence. Instruction IV specified that the Petitioners could not be ordered to move on if they were doing only what they had a right to do even though this may anger or irritate others, and if a citizen was doing only those things a policeman could not order him to stop doing them merely because these things angered others and made others want to resort to violence. This instruction stated, "In such a case it is the obligation of the police to protect the citizen from violence by others, and they may not tell him to stop doing what he is doing, or to move along or go away merely because of threats of violence by others." If the Court ruled that Instruction IV was not proper, then IV-A was offered and provided that even if Petitioners refused to obey a proper police order, they could not be convicted if they were doing only what they had a right to do unless "the police reasonably believe that it is impossible to prevent violence from occurring by restraining only those persons who are threatening violence". Alternative Instruction I-A was offered in the event Instruction I was not considered proper. Alternative Instruction I-A requested that the jury be informed that Petitioners could not be convicted unless they "(1) refused to obey a reasonable and lawful police order, clearly communicated to them; or (2) knowingly and purposely engaged in acts which they had no lawful right to do, and which were calculated and likely in themselves to lead to an imminent public disturbance; or (3) knowingly and purposely engaged in acts which they had no lawful right to do, and which obstructed or hindered pedestrians or traffic." Instructions V, VI and VII all requested that the jury be charged con-

cerning the Petitioners' expression of views or ideas. Specifically, Instruction V would prohibit conviction if the only conduct likely to cause a public disturbance "was the expression of views or ideas which other people did not like or resented, or which stirred other people to anger or violence".

Instruction V reads:

> "Under no circumstances may you convict these defendants if the only conduct of theirs which was likely to lead to an imminent public disturbance was the expression of views or ideas which other people did not like or resented, or which stirred other people to anger or violence. The defendants may be convicted only if their conduct, or their manner of expressing their ideas was offensive and likely to lead to a public disturbance, and not if it was the ideas themselves that they were expressing or supporting, which were likely to create a public disturbance. Where conduct — in this case the physical acts of the defendants — is likely to lead to imminent public disturbance, the police may order it stopped, and the refusal to obey such an order is disorderly conduct. But where the danger of imminent public disturbance created by an individual arises from the ideas or the views or beliefs which he expresses, he may not be required to stop and is not guilty of disorderly conduct for refusing to obey a police order to stop expressing his views."

Instruction VI reads:

> "Specifically, I charge you that if the only threat of public disturbance arising from the actions of these defendants was a threat that arose from the anger of others who were made angry by their disagreement with the defendants' expressed views concerning Viet Nam, or American involvement in Viet Nam, you must acquit these defendants. And if you have a reasonable doubt whether the anger of those other per-

sons was occasioned by their disagreement with defendants' views on Viet Nam, rather than by the conduct of the defendants in sitting or staying on the street, you must acquit these defendants."

Instruction VII reads:

"The defendants at all times had a legally protected right to set forth their political views, beliefs or ideology even if the result was to induce a condition of unrest, create dissatisfaction in others, invite dispute, or even stir people to anger at their views. If they did nothing more to create a public disturbance than to exercise this right, the police could not lawfully order them to move along or go away, and they are not guilty of disorderly conduct for disobeying such a police order."

Instruction VIII was to the effect that petitioners would be guilty if they were obstructing the passage of pedestrians on the sidewalk, or if police or a crowd who were attracted by these petitioners sitting on the sidewalk or lying on the sidewalk were obstructing the passage of pedestrians.

Petitioners' request for jury instruction was refused, instead, the Court's instructions in pertinent part, were:

"As all or most of you at least know under the constitution and laws of the State of Maryland the jury in the trial of a criminal case is the judge of both the law and the facts. Anything the Court may say to you about the law is purely advisory. It is intended to be of some help to you but you are at liberty to reject the Court's advise on the law, to arrive at your own independent conclusions of the law if you decide to do so. Likewise, if I should make any comment on the facts, you are not bound by such comment in any respect. It is your function to pass upon the truth of the testimony as given by the various witnesses and the weight to be given their testimony. However,

it is the duty of the Court in a criminal case to advise the jury on the law whenever such a request is made by counsel for either the State or the Defense. There has been such request in this case.

Now there will be no indictment or other papers to be taken with you to the jury room. I simply invite your attention to the fact that each of the six defendants on trial before you today is charged with the crime known as disorderly conduct. Therefor it becomes necessary that I advise you as to what is meant by disorderly conduct.

At common law there was no offense known by that term. In more recent times, however, the charge is contained in a statute known as Section 123 of Article 27 of the Maryland Annotated Code. The essential parts of this statute I will now read to you.

> 'Every person who shall be found acting in a disorderly manner to the disturbance of the public peace upon any public street or highway in any city, town or county in this state shall be deemed guilty of a misdemeanor'.

That misdemeanor is known as disorderly conduct. In further amplification of the meaning of the charge, I instruct you that disorderly conduct is the doing or saying or both of that which offends, disturbs, incites or tends to incite a number of people gathered in the same area. It is conduct of such nature as to affect the peace and quiet of persons who may witness it and who may be disturbed or provoked to resentment because of it. A refusal to obey a policeman's command to move on when not to do so may endanger the public peace, may amount to disorderly conduct."

Petitioners took exception to the definition of disorderly conduct, as offered by the Trial Judge to the jury, on the basis that their First and Fourteenth Amendment rights were violated due to vagueness (A. 159). A guilty verdict was returned and a sentence of sixty (60) days and a fine of Fifty Dollars ($50.00) was imposed on each Petitioner

(A. 159-161). An appeal to the Court of Special Appeals by Petitioners raised seven (7) allegations of error, three (3) of which are the subject of this Petition, namely:

1. That Article 27, Section 123, is unconstitutional on its face under the First and Fourteenth Amendments to the Constitution of the United States;

2. That Article 27, Section 123, as applied from this record, was an unconstitutional abridgment of Petitioners' right of free speech, expression, petition and assembly guaranteed by the First and Fourteenth Amendments to the Constitution of the United States;

3. That Petitioners' convictions violate the First and Fourteenth Amendments to the Constitution of the United States because the Trial Court refused to instruct the jury that Petitioners had a constitutional right to express their political beliefs and ideas, and the jury could not convict solely because those ideas induced a condition of unrest, dispute or anger in other people.

On April 15, 1968, the Court of Special Appeals affirmed the Petitioners' convictions and by Order dated November 26, 1968, the Court of Appeals denied Certiorari (A. 171-182). A Petition for a Writ of Certiorari was filed in this Court on February 15, 1969 and granted October 13, 1969 (A. 183).

## SUMMARY OF ARGUMENT

I. The arrest and prosecution of Petitioners was based on their disorderly conduct which caused a disturbance of the public peace on a street in the City of Baltimore. Petitioners were a portion of a group demonstrating against United States policy in Vietnam, however their political views and ideas did not cause their arrest and prosecution. This position is established by the recognition that the

remaining 35-40 demonstrators, whose activities were peaceful, were not arrested but, on the contrary, received police protection and were granted complete freedom to picket an Army Recruiting Office and distribute literature to unsympathetic on-lookers. Only when Petitioners sat and/or lay on a 10-12 foot sidewalk, in a commercial section of the city, blocked it as a public passageway, and refused officers' requests to move, were they arrested for disorderly conduct. The thrust of Petitioners' argument is that their arrest and prosecution was based on an expression of their political views and ideas. The Respondent argues that Petitioners' arrests, prosecution and convictions were based solely on their disorderly conduct and the vehicle used for this prosecution, Article 27, § 123 of the Maryland Code, the Disorderly Conduct Statute, was a valid constitutional instrument.

II. The Maryland Disorderly Conduct Statute as interpreted by the courts makes its prohibitions sufficiently clear so that a man of common intelligence would be able to know when his conduct would violate the statute. The Maryland Court of Appeals has interpreted this statute as: "The doing or saying, or both, of that which offends, disturbs, incites, or tends to incite a number of people gathered in the same area . . . also, it has been held that failure to obey a policeman's command to move on when not to do so may endanger the public peace, amounts to disorderly conduct." *Drews v. State*, 224 Md. 186 (1961). *Drews* on two occasions was considered by this court (*Drews v. Maryland*, 378 U.S. 547, 12 L. ed. 2d 1032, 84 S. Ct. 1900 (1964) and 381 U.S. 421, 14 L. ed. 2d 693, 85 S. Ct. 1576 (1965)) and in neither instance was the statute voided for vagueness or overbreadth.

The Court of Special Appeals of Maryland reached the conclusion that the Petitioners fully blocked the 10-12-foot

sidewalk for pickets and pedestrians and the resulting arrest of Petitioners on a disorderly conduct charge arose directly "out of the obstruction of the sidewalk which consequentially was causing a public disturbance and the specific refusal to comply with three lawful commands of the police officers." *Bacheller v. State*, 3 Md. App. 626 at 631, 240 A. 2d 623 (1968). And at page 634 the Court stated:

> "Applying the common sense doctrine, we find that the instant statute in conjunction with the previous judicial constructions cited was sufficiently definite to inform a man of ordinary intelligence of the nature of activity proscribed."

Similar disorderly conduct statutes have been held constitutional in *Feiner v. New York*, 340 U.S. 315, 95 L. ed. 295, 71 S. Ct. 303 (1951), and *Chaplinsky v. New Hampshire*, 315 U.S. 568, 86 L. ed. 1031, 62 S. Ct. 766 (1942).

III. Petitioners were prosecuted because their acts constituted disorderly conduct within the prohibition of Article 27, § 123, not because their ideas and opinions created a public disturbance. Their rights of free speech, petition and assembly guaranteed by the First and Fourteenth Amendments were not abridged.

Evidence produced at the trial disclosed that police permitted picketing for two hours by 35-40 demonstrators outside an Army Recruiting Office, and the United States Marshal permitted Petitioners to stage a "sit-in" inside an Army Recruiting Office for a similar period. At closing time when Petitioners refused to leave the office they had to be physically removed from the building. After two Petitioners tried unsuccessfully to crawl back into the building, Petitioners staged a "sit-down" on the public sidewalk effectively blocking passage to the picketers and pedestrians. The crowd of 50-150 persons were unable to

use the sidewalk and spilled onto the street which was a prominent traffic artery in Baltimore. Petitioners thereupon refused to comply with the repeated requests of the officers to move and were arrested for disorderly conduct. None of the peaceful picketers were arrested, however police made one arrest of a bystander for throwing eggs at the picketers.

This evidence shows that the Disorderly Conduct Statute was applied to Petitioners because of their disorderly acts, not their views or ideas.

IV. The charge to the jury by the trial judge was proper under the Maryland law and no constitutional error existed in this charge. The trial judge clearly stated that his comments were purely advisory, and Petitioners' counsel was permitted under Maryland law to argue the facts and law to the jury, even if contrary to the advisory instructions given by the trial judge.

The instructions as given were fair, proper and amply covered the Requested Instructions I through IV-A and VIII. Instructions V through VII were based on the "expression of views or ideas" theory which was unsupported by the evidence and therefore properly refused.

## ARGUMENT

### I.

### INTRODUCTION

Petitioners' argument throughout this litigation has sought to establish that this case involves the issue of free speech — the freedom of expression of political ideas. The position of the State of Maryland has consistently been that the Petitioners were tried and convicted for their *conduct* which was *disorderly*. No attempt was ever made by Maryland law enforcement officers or its courts to curtail Peti-

tioners' First or Fourteenth Amendment rights, as a matter of fact these rights were vigorously protected. However, the State owed another duty to the public, including the pickets, namely not to sit idly by and permit Petitioners' conduct to disrupt the order of the community, block the city sidewalks and thus prevent their use by pedestrians and pickets, or permit requests from law enforcement officers to be ignored when it was apparent that by refusing to comply with these requests the peace and safety of the public was in imminent peril.

The entire thrust of Respondent's argument will, therefore, be anchored firmly on the actual *conduct* of the Petitioners, the constitutionality of the Maryland Disorderly Conduct Statute as interpreted by the Maryland courts and as applied to Petitioners at their trial, and the instructions to the jury.

The fact that the *ideas* of Petitioners were shared by the 35-40 picketers, and Maryland law enforcement authorities granted these picketers complete freedom during the two-hour demonstration is indicative that freedom of speech rights were not violated. An analysis of the *conduct* of Petitioners, as distinguished from that of the pickets, will most convincingly compel the conclusion that Petitioners' conduct was indeed disorderly. Their conduct included an undisputed and prolonged trespass in the Recruiting Office, defiance of federal officials, a blockage of a city sidewalk in a commercial area at 5 P.M. causing a horde of persons to be crammed into a small area. The refusal of Petitioners to respond to a proper request to move, so as to unplug the congestion their immobile bodies were causing, and thus enable the pedestrians and pickets to resume their unobstructed use of the sidewalk cannot be ignored by the State.

Indeed, to have ignored this responsibility would have constituted a failure by the State of a duty owed to the

peaceful pickets and pedestrians. In none of the cases before this Court has there ever been a suggestion that this power of the State should not be utilized. "When clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace, or order, appears, the power of the state to prevent or punish is obvious", *Cantwell v. Connecticut*, 310 U.S. 296, 308, 84 L. ed. 1213, 60 S. Ct. 900 (1940). "Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses. The authority of a municipality to impose regulations in order to assure the safety and convenience of the people in the use of public highways has never been regarded as inconsistent with civil liberties but rather as one of the means of safeguarding the good order upon which they ultimately depend. The control of travel on the streets of cities is the most familiar illustration of this recognition of social need. Where a restriction of the use of highways in that relation is designed to promote the public convenience in the interest of all, it cannot be disregarded by the attempted exercise of some civil right which in other circumstances would be entitled to protection", *Cox v. New Hampshire*, 312 U.S. 569, 85 L. ed. 1049, 61 S. Ct. 762 (1941), at 574. "Governmental authorities have the duty and responsibility to keep their streets open and available for movement. A group of demonstrators could not insist upon the right to cordon off a street, or entrance to a public or private building, and allow no one to pass who did not agree to listen to their exhortations", "Nothing we have said here or in No. 24, 379 U.S. 536, 13 L. ed. 2d 471, 85 S. Ct. 453, is to be interpreted as sanctioning riotous conduct in any form or demonstrations, however peaceful their conduct or commendable their motives, which con-

flict with properly drawn statutes and ordinances designed to promote law and order, protect the community against disorder, regulate traffic, safeguard legitimate interests in private and public property, or protect the administration of justice and other essential governmental functions", "The First and Fourteenth Amendments, I think, take away from government, state and federal, all power to restrict freedom of speech, press, and assembly *where people have a right to be for such purposes.* This does not mean, however, that these amendments also grant a constitutional right to engage in the conduct of picketing or patrolling, whether on publicly owned streets or on privately owned property. See Labor Board v. Fruit & Vegetable Packers & Warehousemen, 377 U.S. 58, 76, 12 L. ed. 129, 141, 84 S. Ct. 1063 (concurring opinion). Were the law otherwise, people on the streets, in their homes and anywhere else could be compelled to listen against their will to speakers they did not want to hear. Picketing, though it may be utilized to communicate ideas, is not speech, and therefore is not of itself protected by the First Amendment", "And the crowds that press in the streets for noble goals today can be supplanted tomorrow by street mobs pressuring the courts for precisely opposite ends", *Cox v. Louisiana*, 379 U.S. 536, 13 L. ed. 2d 471, 85 S. Ct. 453 (1965). "The police power of a municipality is certainly ample to deal with all traffic conditions on the streets — pedestrian as well as vehicular. So there could be no doubt that if petitioner were one member of a group obstructing a sidewalk he could, pursuant to a narrowly drawn ordinance, be asked to move on and, if he refused, be arrested for the obstruction.", *Shuttlesworth v. Birmingham*, 382 U.S. 87, 15 L. ed. 2d 176, 86 S. Ct. 211 (1965). "Disturbers of the peace do not always rattle swords or shout invectives. It is high time to challenge the assumption in which too many people have

too long acquiesced, that groups that think they have been mistreated or that have actually been mistreated have a constitutional right to use the public's streets, buildings, and property to protest whatever, wherever, whenever they want, without regard to whom such conduct may disturb", *Brown v. Louisiana*, 383 U.S. 131, 162, 15 L. ed. 2d 637, 86 S. Ct. 719 (1966). And the singing by the Petitioners and pickets may have, according to Petitioners, prevented the requests of the officers to move from being heard. This misplaced vocalizing may have been visualized by Mr. Justice Black in his concurring opinion in *Brown, supra*, at p. 168: "The peaceful songs of love can become as stirring and provocative as the Marseillaise did in the days when a noble revolution gave way to rule by successive mobs until chaos set in".

The tool utilized by the State of Maryland, Article 27, § 123, the Disorderly Conduct Statute, was a proper one. The Statute was drawn and has been interpreted along narrow, specific lines that are understandable to the common man. It gives fair warning of what is prohibited. The intelligence and breadth of knowledge of the Petitioners, college students or graduates, would appear to present no problem to their clearly understanding its prohibitions. To the contrary, their conduct and actions were not only in opposition of the Statute but in defiance of governmental authority and disregard for the safety of their fellow citizens. This Statute was fairly, reasonably and non-discriminatorily applied to the Petitioners and the instructions given by the nisi prius judge to the jury were proper. "A State or its instrumentality may, of course, regulate the use of its libraries or other public facilities. But it must do so in a reasonable and nondiscriminatory manner, equally applicable to all and administered with equality to all", *Brown v. Louisiana, supra*, at p. 143.

## II.

**THE MARYLAND DISORDERLY CONDUCT STATUTE, ARTICLE 27, SECTION 123 OF THE ANNOTATED CODE OF MARYLAND, IS A CONSTITUTIONAL LEGISLATIVE ENACTMENT. AS INTERPRETED AND APPLIED BY THE COURT OF APPEALS OF MARYLAND, IT IS NEITHER VOID FOR VAGUENESS NOR OVERBREADTH.**

This issue is a basic one. Does the Maryland disorderly conduct statute as interpreted by its courts make its prohibitions sufficiently clear so that a person of common intelligence would be able to know when their conduct would violate the statute?

"We agree to all the generalities about not supplying criminal laws with what they omit, but there is no canon against using common sense in construing laws as saying what they obviously mean." Words used by Mr. Justice Holmes in *Roschen v. Ward*, 279 U.S. 337 at 339, 73 L. Ed. 722, 49 S. Ct. 336 (1929).

The Maryland disorderly conduct statute obviously intends to proscribe disorderly conduct. It reads in pertinent part:

> "Every person who shall be found . . . acting in a disorderly manner to the disturbance of the public peace, upon any public street or highway, in any city, town or county in this State . . . shall be deemed guilty of a misdemeanor; and upon conviction thereof, shall be subject to a fine of not more than fifty dollars, or be confined in jail for a period of not more than sixty days or be both fined and imprisoned in the discretion of the court. . . ."

Maintaining the public peace is the primary responsibility of the State, not the Federal Government. The states have enacted statutes to meet this responsibility and have provisions in their constitutions guaranteeing freedom of

religion, speech, press and peaceful assembly. Before these treasured principles were included in the Federal Constitution, they existed in Maryland. The disorderly conduct statute has existed in Maryland since 1719 and in the form which is now being questioned since 1880. Its constitutionality as to form and manner of application has merited the approval of the Maryland judiciary. This Court considered a previous constitutional challenge of this statute, *Drews v. Maryland*, 378 U.S. 547 (1964), and reversed and remanded on other grounds. The case was affirmed on remand in *Drews v. State*, 236 Md. 349 (1964) and the appeal was dismissed and certiorari denied in *Drews v. Maryland*, 381 U.S. 421 (1965).

The author of an effective yet constitutionally appropriate disorderly conduct statute must be possessed of many talents. Precision, good judgment, political acumen, reasonableness, intuition, clairvoyance, soothsaying, not to mention a knowledge of constitutional law, must be attributes of the author. This exercise in talents is the responsibility of the State legislatures, not this Court. After the legislature has adopted the disorderly conduct statute, its "on the spot" implementation by the State's officer must past the leisurely scrutiny of the State and Federal courts. In drafting such a disorderly conduct statute it is literally impossible to articulate with the utmost specificity all of the precise activities which are proscribed.

"The draftsman thus must maintain proper balance between the specifications of acts sufficient to enlighten judges and administrators and flexible directions which permits adjustment and effective enforcement of the statute. . . . Simplicity of expression, however, need not lead to uncertainty if generic terms are selected for de-

scriptive purposes. In fact, in most cases questions of interpretation will be fewer if the statute is general in character than if it is burdened with excessive details. Nevertheless such drafting may lead to constitutional attack for the many decisions on the question of uncertainty have encouraged litigants to allege the unconstitutionality of statutes on this ground.

"It is the duty of courts however to endeavor by every rule of construction to ascertain the meaning of and give full force and effect to the legislative product unless it violates a specific constitutional prohibition. . . . An analysis of the decided cases indicates that determinations of invalidity based on uncertainty frequently reflect antagonism to legislative policy rather than uncertainty concerning legislative meaning." See Sutherland Statutory Construction, 3rd Edition Horack, § 4920.[2]

The lack of specificity in a rule, law or commandment does not render it impotent when the exercise of logic and common sense permit an understanding of its prohibitions to a person of average intelligence. An examination of the laws given to Moses on Mount Sinai centuries ago would enable argument to be advanced that these laws are void for vagueness or overbreadth. The Maker, In-

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[2] *Winters v. New York*, 333 U.S. 507, 92 L. Ed. 840, 68 Sup. Ct. 665 (1948) (statutory vagueness and free speech); Comment, The Void for Vagueness Rule in California, 41 Calif. L. Rev. 525 (1953); Notes, 61 Harv. L. Rev. 1208 (1948); 23 Ind. L.J. 272 (1948); 22 So. Calif. L. Rev. 298 (1949); "A statute cannot be held void for uncertainty if any reasonable and practical construction can be given to its language." . . . ("a statute is not required to have that degree of exactness which inheres in a mathematical theorem"); *State v. Hertzog*, 241 La. 783, 131 So. 2d 788 (1961) (even though the word "vulgar" would have been void for vagueness standing alone, it was sufficiently definite by virtue of its association with the words "obscene, profane, . . . lewd, lascivious or indecent" to save a statute restricting anonymous telephone calls of that description from invalidity); . . .

terpreter and Final Arbiter of these laws has apparently in the interim not deemed their amendment to be necessary. Although noncompliance with their admonitions and prohibitions has been prevalent, it seems obvious that noncompliance has been due as in Petitioners' case, to the intent of the violator, rather than lack of understanding of the commandments.

Simple generic terms as used in the statute express to a man of average intelligence what is necessary or prohibited. The commandments are expressed in the simplest of terms and completely understandable to the sinner, although theologians may experience difficulty in agreeing on an interpretation. The standards "hot" and "cold" present no problem to the child seeking a drink but would be totally unacceptable to a meteorologist to permit a description of the weather or a scientist performing an experiment. The "Disorderly Conduct" prohibition is similarly clearly understood by its offenders and the man of common intelligence, however judges and lawyers might well contest its specific meaning as they have been doing for centuries over the terms "probable cause", "due process", "reasonable", "competent", "fair", "proper", etc.

Common terms used in a statute are to be given their common meaning. "Legislation when not expressed in technical terms is addressed to the common run of men and is therefore to be understood according to the sense of the thing, as the ordinary man has a right to rely on ordinary words addressed to him." Justice Frankfurter in *Addison v. Holly Hill Fruit Products, Inc.*, 322 U.S. 607, 618, 88 L. Ed. 1488, 1496, 64 Sup. Ct. 1215, 1221 (1944); *Palmer v. Spaulding*, 299 N.Y. 368, 87 N.E. 2d 301 (1949) (where ordinary meaning was ascribed the word "addicted"); "Laws are enacted to be read and observed by

the people and in order to reach a reasonable and sensible construction thereof, words that are in common use among the people should be given the same meaning in the statute as they have among the great mass of the people who are expected to obey and uphold them."

Some courts have gone so far as to say that it is unconstitutional for a legislature to give words in a statute anything other than their common meanings. *Central Television Service, Inc. v. Isaacs*, 27 Ill. 2d 420, 189 N.E. 2d 333 (1963).

Complexity of social problems with which a statute deals is a reason for adopting a "practical construction" of the statutory language, lest legislative "purposes be too easily nullified by over-refined inquiries into the meaning of words." *People v. Fair*, 62 Cal. Rptr. 632 (Cal. App. 1967).

The Court of Special Appeals of Maryland in deciding this case, *Bacheller v. State, supra*, at 631 stated:

> "All statutes come before this Court cloaked in a presumption of constitutionality. Therefore, any challenge levied at the constitutionality of a duly enacted statute must clearly establish that said statute plainly contravenes the Federal or State Constitutions, otherwise the presumption remains unrebutted and the statute will not be declared unconstitutional. See *Woodell v. State*, 2 Md. App. 433, 437, 234 A. 2d 890 (1967). Clearly, a statute is within the guidelines of the constitutional safeguards only if persons of ordinary intelligence would be able to know when their conduct would place them in violation of the specified statutory prohibition. *Connally v. General Construction Co.*, 269 U.S. 384, 46 S. Ct. 126, 70 L. Ed. 322 (1926); *Lanzetta v. New Jersey*, 306 U.S. 451, 59 S. Ct. 618, 83 L. Ed. 888 (1939). However, while compelling strict compliance to such guidelines, the Federal Constitution refrains from the imposition of impossible standards of specificity in the construction of penal

statutes. The primary requirement is that a statute convey 'sufficiently definite warning as to the proscribed conduct when measured by common understanding and practice.' *United States v. Petrillo*, 332 U.S. 1, 8, 67 S. Ct. 1538, 91 L. Ed. 1877 (1947); *United States v. Woodward*, 376 F. 2d 136, 140 (1967).

"The formulation of statutory language is, at best, an inexact exercise vulnerable to varying degrees of doubt and ambiguity. Therefore, the enunciation of the meaning and ambit of a specific statute by judicial construction strives to ascertain and define the legislative intent and purpose, and upon making of a determination of the legislative meaning the efficacy of the statute is more clearly and precisely promulgated.

"In making our determination of the instant statute's constitutional posture, we remain attentive to the observation of Mr. Justice Holmes in *Roschen v. Ward*, 279 U.S. 337, 49 S. Ct. 336, 73 L. Ed. 722 (1929), when he stated at page 339:

" 'We agree to all the generalities about not supplying criminal laws with what they omit, but there is no canon against using common sense in construing laws as saying what they obviously mean.' "

Although reversing on other grounds, this Court in *Shuttlesworth v. Birmingham, supra*, ruled that in passing on the constitutionality of an ordinance the Supreme Court has the duty to accept the State judicial construction of an ordinance. The judicial construction placed upon Article 27, Section 123 by the Maryland Court is:

"The gist of the crime of disorderly conduct under Sec. 123 of Art. 27, as it was in the cases of common law predecessor crimes, is the doing or saying, or both, of that which offends, disturbs, incites, or tends to incite a number of people gathered in the same area. . . . Also, it has been held that failure to obey a policeman's command to move on when not to do so may endanger the public peace, amounts to disorderly conduct." *Drews v. State*, 224 Md. 186.

Similar disorderly conduct statutes have been held constitutional in *Feiner v. New York, supra,* and *Chaplinsky v. New Hampshire, supra.*

The Court of Special Appeals of Maryland reached the conclusion that the Petitioners fully blocked the 10-12 foot sidewalk for pickets and pedestrians and the resulting arrest of Petitioners on a disorderly conduct charge arose directly "out of the obstruction of the sidewalk which consequentially was causing a public disturbance and the specific refusal to comply with three lawful commands of the police officers." *Bacheller v. State, supra,* at 631. In affirming the convictions the Court stated at page 634:

> "Applying the common sense doctrine, we find that the instant statute in conjunction with the previous judicial constructions cited was sufficiently definite to inform a man of ordinary intelligence of the nature of activity proscribed. Faced with the present facts and circumstances, it would unduly stretch our credulity to accept the urging that the appellants, after obstructing the sidewalk by sitting and lying down thereon, and refusing to comply with the thrice repeated request by the police, were ignorant of the fact that they were engaged in disorderly conduct of such a nature as legally proscribed."

In *Thompson v. Louisville,* 362 U.S. 199, 4 L. ed. 2d 654, 80 S. Ct. 624 (1960) at 205, this Court had before it a conviction on a disorderly conduct ordinance (which was reversed on other grounds) of the City of Louisville, Kentucky. The ordinance read: "Whoever shall be found guilty of disorderly conduct in the City of Louisville shall be fined". The court made no reference in its opinion to vagueness or overbreadth in the wording of this ordinance.

This Court has held that a statute is not unconscionably vague where its provisions employ words with a well

settled common law meaning, *Waters-Pierce Oil Co. v. Texas,* 212 U.S. 86, 53 L. ed. 417, 29 S. Ct. 220 (1909); *Nash v. United States,* 229 U.S. 373, 57 L. ed. 1232, 33 S. Ct. 373 (1913); *Hygrade Provision Co. v. Sherman,* 266 U.S. 497, 69 L. ed, 402, 45 S. Ct. 141 (1925), approved in *Connally v. General Construction Co.,* 269 U.S. 385, 70 L. ed. 322, 46 S. Ct. 126 (1926), or is not couched in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application. *Whitney v. California,* 274 U.S. 357, 71 L. ed. 109[illegible] Ct. 641 (1927); *Fox v. Washington,* 236 U.S. 273, 59 L. ed. [illegible]3, 35 S. Ct. 383 (1915); *Miller v. Strahl,* 239 U.S. 426, 60 L. ed. 364, 36 S. Ct. 147 (1915); *Omaechevarria v. Idaho,* 246 U.S. 343, 62 L. ed. 763, 38 S. Ct. 323 (1918); *United States v. Alford,* 274 U.S. 264, 71 L. ed. 1040, 47 S. Ct. 597 (1927), and this expression of view is not limited to cases of recent vintage as Chief Justice Marshall, in *United States v. Wiltberger,* 5 Wheat. 76, 95, 48 Harvard Law Review 751, stated:

> ". . . though penal laws are to be construed strictly, they are not to be construed so strictly as to defeat the obvious intention of the legislature. . . . The intention of the legislature is to be collected from the words they employ. Where there is no ambiguity in the words, there is no room for construction."

In *United States v. Woodard,* 376 F. 2d 136 (1967), the defendants were convicted in the United States District Court for the Northern District of Illinois, Eastern Division, of disorderly conduct pursuant to Assimilated Crimes Act and Illinois Disorderly Conduct Statute. On Appeal the United States Court of Appeals for the Seventh Circuit held that the First Amendment did not protect the conduct of one defendant who announced to marshals at a House Committee on Unamerican Activities hearing that if de-

fendant was going to leave the marshals would have to carry him and then fell limp on the floor, causing disorder and confusion among others nearby, or conduct of his co-defendant who shouted while present at the hearing and who refused to stop shouting after warning.

The Illinois Statute under which they were charged provided "a person commits disorderly conduct when he knowingly . . . does any act in such unreasonable manner as to alarm or disturb another and to provoke a breach of the peace." No judicial interpretation of this section of the Illinois Code was made available to the Seventh Circuit Court of Appeals, however the following legislative committee comments afforded some assistance in the construction of the statute.

> "Section 26 — 1(a) is a general provision intended to encompass all of the usual types of 'disorderly conduct' and 'disturbing the peace'. Activity of this sort is so varied and contingent upon surrounding circumstances as to almost defy definition. Some of the general classes of conduct which have traditionally been regarded as disorderly are here listed as examples: the creation or maintenance of loud and raucous noises of all sorts; unseemly, boisterous, or foolish behavior induced by drunkenness; threatening damage to property or indirectly threatening bodily harm (which may not amount to assault); carelessly or recklessly displaying firearms or other dangerous instruments; preparation for engaging in violence or fighting; and fighting of all sorts. In addition, the task of defining disorderly conduct is further complicated by the fact that the type of conduct alone is not determinative, but rather culpability is equally dependent upon the surrounding circumstances. Thus, the discharge of a pistol on the desert by a lone marksman is harmless, whereas the discharge of the same pistol in a library or church is blameworthy. Similarly, shouting, waving and drinking beer may be

permissible at the ball park, but not at a funeral. These considerations have led the Committee to abandon any attempt to enumerate 'types' of disorderly conduct. Instead, another approach has been taken. As defined by the Code, the gist of the offense is not so much that certain overt type of behavior was accomplished, as it is that the offender knowingly engaged in some activity in an unreasonable manner which he knew or should have known would tend to disturb, alarm or provoke others. The emphasis is on the unreasonableness of his conduct and its tendency to disturb. The Committee felt that this definition places the offense on its proper foundation, namely, an invasion of the right of others not to be molested or harassed, either mentally or physically, without justification."

In a separate concurring opinion written by Judge Cummings:

"It is of course a court's duty to strive for a construction of a statute that will support its constitutionality. Screws v. United States, 325 U.S. 91, 98, 100, 65 S. Ct. 1031, 89 L. Ed. 1495; United States v. National Dairy Corp., 372 U.S. 29, 32, 83 S. Ct. 594, 9 L. Ed. 2d 561, Amsterdam, 'The Void-for-Vagueness Doctrine in the Supreme Court', 109 U. of Pa. L. Rev. 67, 86 (1960)."

* * * * * *

"As Professor Paul Freund has pointed out, even an over-broad statute can be saved by construction relatively simple and natural . . . .

"Because of the 'hard core' nature of these violations, it is clear that defendants had notice that their activities were within the ambit of the Illinois statute and therefore cannot successfully assail its purported vagueness. . . . Clearer methods of achieving the ends sought by this statute would not be feasible, for, as the draftsman recognized, disorderly conduct activity defies precise statutory definition. . . . It would be manifestly unfair to invalidate a new statute, expertly

drawn to cope with elusive subject matter, if the statute can be saved by judicious construction. . . .

"In considering the New Jersey disorderly conduct statute, that State's Supreme Court recognized that 'the subject is such that greater specificity is not feasible', thus requiring the courts to see to it that the statute is 'not applied beyond a fair understanding of the legislative intent'. State v. Smith, 46 N.J. 510, 218 A. 2d 147, 152 (1966), certiorari denied, 385 U.S. 838, 87 S. Ct. 85. Here a man of ordinary intelligence would certainly know what kind of behavior comports with an orderly legislative hearing. This standard suffices to justify the application of the Illinois statute to the facts of this case. Connally v. General Construction Co., 269 U.S. 385, 391, 46 S. Ct. 126, 70 L. Ed. 322."

As recently as 1968 in *Zwicker v. Boll*, 391 U.S. 353, 20 L. Ed. 2d 642, 88 S. Ct. 1666 (1968), this Court in a per curiam opinion affirmed the judgment of a three-judge district court ruling which dismissed the federal complaint without an evidentiary hearing in favor of state criminal proceedings. The relief sought by petitioners was a declaratory judgment that the Wisconsin disorderly conduct statute was overboard and void, or an injunction restraining state criminal prosecution against them under that statute. The statute in question was Wisconsin Statute 947.01 which reads in pertinent part:

"947.01. Disorderly conduct. Whoever does any of the following may be fined not more than $100 or imprisoned not more than 30 days: (1) In a public or private place, engages in violent, abusive, indecent, profane, boisterous, unreasonably loud, or otherwise disorderly conduct under circumstances in which such conduct tends to cause or provoke a disturbance. . . ."

In regulating public conduct, the basic aims of all legislatures are the same, and the wording of all disorderly

conduct statutes are similar; however, the Maryland disorderly conduct statute, Article 27, Section 123, *supra*, is clearly not as broad as that of many states.[3]

*Disturbing the Public Theory and Disobeying Police Theory.*

The argument advanced by Petitioners to support each of these theories is met and defeated by *Feiner v. New York, supra*, In *Feiner* this court upheld the conviction for violation of Section 722 of the Penal Law of New York.[4] In *Feiner* the police officers made no effort to interfere with the speech just as Baltimore officers made no effort to interfere with the peaceful picketing. The concern of police was aroused, however, in *Feiner* with the effect of the crowd on both pedestrian and vehicular traffic. As in the present case the Baltimore officers were similarly concerned with the inability of pedestrians and pickets to use the sidewalk. The crowds in both instances were restless, and as Feiner's statements "stirred up a little excitement", it is a fair statement to say that Petitioners conduct not their ideas, had a similar reaction. On three occasions the

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[3] A review of the Disorderly Conduct or Disturbing the Peace Statutes of other states indicates that the Maryland Statute as judicially interpreted possesses greater clarity, specificity and reasonableness than many states. For a comparison of the Maryland Statute with those of other jurisdictions plus American Law Institute, Model Penal Code Statutes relating to "Disorderly Conduct", "Obstructing Highways and other Public Passages", and "Riot: Failure to Disperse", see Footnote 3A which, due to length, is set forth at Pages 55 through 69 of this brief.

[4] Section 722:

"Any person who with intent to provoke a breach of the peace, or whereby a breach of the peace may be occasioned commits any of the following acts shall be deemed to have committed the offense of disorderly conduct: 1. Uses offensive, disorderly, threatening, abusive or insulting language, conduct or behavior; 2. Acts in such a manner as to annoy, disturb, interfere with, obstruct, or be offensive to others; 3. Congregates with others on a public street and refuses to move on when ordered by the police; . . ."

Syracuse, New York, police requested Feiner to cease and desist and upon his refusal he was arrested. The case presently under consideration bears a remarkable similarity.

The Maryland Court of Special Appeals stated "applying the common sense doctrine, we find that the instant statute in conjunction with the previous judicial constructions cited was sufficiently definite to inform a man of ordinary intelligence of the nature of activity proscribed. Faced with the present facts and circumstances, it would unduly stretch our credulity to accept the urging that the appellants, after obstructing the sidewalk by sitting and lying down thereon, and refusing to comply with the thrice repeated request by the police, were ignorant of the fact that they were engaged in disorderly conduct of such a nature as legally proscribed." *Bacheller v. State, supra,* at 634 and p. 30, *supra.*

The Petitioners are college students or graduates and there is no indication that they possessed less than ordinary intelligence.

The New York statute which was upheld in *Feiner* would merit from Petitioner the same charges that he levels at the Maryland Disorderly Conduct Statute. The New York Statute is considerably broader than the Maryland Statute in that it condemns offensive language which results in a breach of the peace. The New York statute includes "refuses to move on when ordered by police" which has been judicially added to the Maryland Statute.

In upholding Petitioners' convictions the Maryland Court of Special Appeals commented:

> "It is of considerable significance that the prior constitutional challenge levied upon this specific statute and section in *Drews v. State, supra,* 224 Md. 186, reversed and remanded on other grounds in *Drews v. Maryland,* 378 U.S. 547 (1964) was affirmed on remand in *Drews v. State,* 236 Md. 349, 204 A. 2d 64 (1964)

and the appeal was dismissed and certiorari denied in *Drews v. Maryland*, 381 U.S. 421 (1965). This in conjunction with the fact that similar disorderly conduct statutes have been held constitutional by the United States Supreme Court in *Feiner v. New York*, 340 U.S. 315, 71 S. Ct. 303, 95 L. Ed. 267 (1951), and *Chaplinsky v. New Hampshire*, 315 U.S. 568, 62 S. Ct. 766, 86 L. Ed. 1034 (1942) leads us to conclude that statutes of this kind are not repugnant to the Federal Constitution." (A. 176-177).

It is submitted that Article 27, § 123 of the Maryland Code does not offend the basic principle that a statute is bad if it "either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application," *Connally v. General Construction Co., supra.* The Maryland Statute proscribes "acting in a disorderly manner" and although the judicial construction includes the "doing or saying, or both" the facts in this case relate only to Petitioners' *conduct* not their ideas or speech.

## III.

**PETITIONERS WERE ARRESTED BECAUSE THEIR ACTS CONSTITUTED DISORDERLY CONDUCT WITHIN THE PROHIBITIONS OF ARTICLE 27, SECTION 123, NOT BECAUSE THEIR IDEAS AND OPINIONS WERE DEEMED TO CREATE A PUBLIC DISTURBANCE; THUS THE RIGHTS OF FREE SPEECH, PETITION AND ASSEMBLY GUARANTEED BY THE FIRST AND FOURTEENTH AMENDMENTS WERE NOT ABRIDGED.**

A distinction must be made at this juncture, between a theoretical discussion of the constitutional right of a group of persons to espouse ideas and views that may merit public approbation or distain, and, a practical consideration of the actual facts that are now before this Court, namely Petitioners disorderly conduct March 28, 1966, on a busy Baltimore sidewalk. No legal stratagem can deny: that

Baltimore Police were present in sufficient numbers to insure that the activities of anti-war picketers were fully protected for a two hour period; that peace and order was successfully maintained by police during this demonstration; that this tranquility was abruptly terminated when the six petitioners assumed a sitting or prone position on a 10'-12-foot wide sidewalk; that a blockage in pedestrian and picket traffic resulted; that petitioners refused repeated police requests to get up and move; that their arrest was reluctantly made by police, because of their disorderly conduct, to restore order in the community.

Testimony from the arresting officers clearly establishes that the arrests were made because Petitioners "were blocking free passage of the sidewalk" (A. 39). Lieutenant DiPino testified:

> "I asked them to get up and move. We didn't want to lock them up, we wanted them to get away, to clear the streets so people could walk. I asked them again. I said to my officers, 'Don't touch them, don't put a hand on them. If the wagon comes, they still refuse to move, we'll have to go'. In fact they wouldn't get up, we had to carry each one separately" (A. 59).

Petitioners would have this Court adopt the theory that they were arrested because the ideas they espoused made the crowd "hostile". Testimony would indicate that this was an existing circumstance at the time but *not* the reason Petitioners were arrested. Petitioners' argument cannot prevail. It was not accepted by the Maryland courts and Lieutenant DiPino's statement,

> "When I asked them to get up they wouldn't get up. They got up in a sitting position. I asked them twice. They started to sing. Then they started to sing. I said 'Wait' to the men 'wait until the wagon comes'. I said 'If you don't get up you're under arrest'. They wouldn't get up; they were under arrest" (A. 55).

can permit no conclusion other than the Petitioners were arrested for blocking the sidewalk, and for failure to obey a policeman's command to move on when not to do so may endanger the public peace.

At p. 53 of Petitioners' brief it is stated:

> "We have also said at pp. 27-29, *supra*, that we do not challenge or deny Maryland's power to keep its sidewalks unobstructed, as well as peaceful. *But the power against obstruction has nothing to do with this case.*" (Emphasis supplied).

This is the key issue in this matter. An examination of the record clearly discloses that *obstruction of the sidewalk* was the prevailing factor that caused the arrest of Petitioners, not disagreement with their ideas. For example, the record shows:

1. That police permitted picketing for two hours and the United States Marshal permitted a sit-in in an Army Recruiting Office for a similar period. These conditions would permit a reasonable conclusion to be drawn that neither the state nor federal officials acted in a precipitous fashion and deprived Petitioners of First and Fourteenth Amendment rights.

2. At the end of the two hour period the removal of Petitioners from the Recruiting Office was essential as the office was closing.

3. The removal was accomplished in the only manner possible, namely by physically carrying or escorting Petitioners outside the building.

4. After an unsuccessful attempt by two of the Petitioners to crawl back into the office (A. 38), the "sit-in" of Petitioners was converted into a "sit-down" on a public sidewalk.

5. That an ample supply of officers were present to insure that peace and order existed and pedestrian and vehicular traffic was not impeded throughout the peaceful picketing and distribution of handbills (A. 37, 49, 65, 165-167, 169).

6. That the peace and order which prevailed during the demonstration was markedly, if not violently, disturbed by the concerted conduct of Petitioners in remaining in a prone or sitting position on the 10'-12' sidewalk, effectively blocking it as a public passageway.

7. That this sidewalk was in a commercial section, the 5 P.M.-5:15 P.M. sidewalk sit down prevented the peaceful picketers from continuing to march, and caused pedestrian traffic, amounting to 50-150 persons, to become blocked because no one could pass through the Petitioners.

8. That this sidewalk blockage resulted in pedestrian traffic spilling out onto the roadway of Greenmount Avenue, which is a prominent traffic artery in the City of Baltimore (A. 170).

9. That Petitioners, during the existence of this sidewalk blockage, refused to comply with the repeated requests of the officers to move.

10. Rather than suppressing expression protected by the First Amendment, this right was permitted and guarded by Baltimore law enforcement officers for a period of two hours. Only when the disorderly Petitioners effectively blocked the sidewalk, prevented pedestrians and demonstrators from freely participating in legitimate movement, and ignored the repeated legitimate requests by police to move, did so-

ciety's representatives exercise their dual responsibility and duty by removing the disorderly Petitioners from the chaotic condition that existed and placing them under arrest.

Photographic evidence introduced by the State clearly shows that the sidewalk was completely blocked and the crowd spilled out onto the traffic artery (A. 170). This contradicts testimony from petitioner Daniel Rudman who testified:

> "Was it possible for people to walk through you when you were on the sidewalk? A. Yes, sir. As I stated previously there was plenty of space for people to walk through" (A. 113).

As law enforcement officers, the Baltimore police on the scene had the responsibility of preserving the public peace. The public peace was definitely disturbed; the circumstances disclosed that peace and order could only be restored by having the Petitioners get up and move. Since Petitioners refused to move, and our laws do not permit either fellow citizens or law officers to use force under these conditions, the officers had no choice other than to exercise their arrest powers in order to:

a. Remove Petitioners physically from the sidewalk, and

b. Thus permit the free use of the sidewalk by pedestrians to restore public peace and order.

Misdemeanors amounting to a breach of the peace had been committed in the presence of law enforcement officers and citizens, therefore the arrest could have been made by either. Obstructing the sidewalk had the legal effect under these circumstances of not only constituting a violation of Article 27, § 123, the Disorderly Conduct Stat-

ute, but also Article 27, § 121 of the Maryland Code, obstructing free passage.[5] There can be no doubt of a violation of the Disorderly Conduct Statute as certainly Petitioners' actions in refusing to comply with the repeated requests by police escalated their offense into the category of disorderly conduct, if in fact it could be said that Petitioners combined action in blocking the sidewalk was not in itself disorderly conduct. The fact that the prosecutor elected to proceed under the Disorderly Conduct Statute (Article 27, § 123) rather than the obstructing the sidewalk section (Article 27, § 121) was entirely within the prerogative of the prosecutor when a violation of both statutes existed.

Petitioners cite language used by Lieutenant DiPino and Sergeant DiCarlo in testifying at the trial, to support argument that the arrest was due to the hostility of spectators; that officers felt compelled to "lock them up for their protection" (A. 65, Pet. Br. 50). The language used by officers is not the determining factor, but rather the facts and circumstances existing at the scene determine the applicable law.

> "To make constitutional questions turn on the term chosen by police officers to describe their activity — officers who are accustomed to the vernacular of the police station and unschooled in the accepted constitutional vocabulary — is to engage in a futile and un-

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[5] "Article 27.

§ 121. Obstructing free passage; making unseemly noises; obscene language, etc.

Any person who shall wilfully obstruct or hinder the free passage of persons passing along or by any public street or highway in any city, town or county of this State, . . . shall, upon conviction thereof, be sentenced to a fine of not less than one dollar and not more than twenty-five dollars and costs of the prosecution . . ."

This statute was amended effective June 1, 1966, so that the penalty was increased to a maximum fine of one hundred dollars and imprisonment for a period of not more than thirty days.

warranted exercise in semantics." *Ralph v. Pepersack*, 335 F. 2d 128 at 134 (1964).

In upholding an arrest for "Investigation" a federal court of appeals said:

> "Of course there is no such crime as 'Investigation.' But this description given by the officer does not go to the question of probable cause. The question is not what name the officer attached to his action; it is whether, in the situation in which he found himself, he had reasonable ground to believe a felony had been committed and that the men in the car had committed it." *Bell v. United States*, 254 F. 2d 82 (1958).

A statement Lord Mansfield made in 1779 that in trying the legality of acts of officers "They ought not to suffer from a slip of form, if their intention appears by evidence to have been upright . . . The principal inquiry to be made by a court of justice is how the heart stood? And if there appears to be nothing wrong there, great latitude will be allowed for misapprehension or mistakes". *United States v. Bell*, 48 F. Supp. 986 at 992 (1943).

In addition to the factors cited, *supra*, the upright intentions of the Baltimore Police Department are marked by three additional incidents:

1. The laws of the State of Maryland were fairly enforced throughout the demonstration as noted by the arrest of one person in the crowd for throwing eggs at the picketers (A. 50).

2. The police were assigned to the area of the demonstration for the purpose of protecting the demonstrators and preserving rather than interfering with their First and Fourteenth Amendment rights (A. 44, 53).

3. Photographs of the scene were taken in order to preserve for later judicial scrutiny the actual conditions which existed (A. 39). This action conformed with a technique suggested by this Court 77 days later in *Miranda v. Arizona*, 384 U.S. 436 at 467, 477, 16 L. ed. 2d 694, 86 S. Ct. 1602 (1966).

*Decisions of this Court fully support the action taken by the law enforcement officers of Maryland in arresting Petitioners.*

The language in *Cantwell v. Connecticut, supra; Cox v. New Hampshire*, 312 U.S. 569, 85 L. Ed. 1049, 61 S. Ct. 762 (1941); *Cox v. Louisiana*, 379 U.S. 536, 13 L. Ed. 2d 471, 85 S. Ct. 453 (1965), and *Cox v. Louisiana*, 379 U.S. 559, 13 L. Ed. 2d 487, 85 S. Ct. 476 (1965); and *Shuttlesworth v. Birmingham*, 382 U.S. 87, 15 L. Ed. 2d 176, 86 S. Ct. 211 (1965) seem quite applicable.

*Cantwell v. Connecticut, supra*, at page 308 states:

> "The offense known as breach of the peace embraces a great variety of conduct destroying or menacing public order and tranquillity. It includes not only violent acts but acts and words likely to produce violence in others. No one would have the hardihood to suggest that the principle of freedom of speech sanctions incitement to riot or that religious liberty connotes the privilege to exhort others to physical attack upon those belonging to another sect. When clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace, or order, appears, the power of the state to prevent or punish is obvious."

*Cox v. New Hampshire, supra*, at page 574 states:

> "Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would

be lost in the excesses of unrestrained abuses. The authority of a municipality to impose regulations in order to assure the safety and convenience of the people in the use of public highways has never been regarded as inconsistent with civil liberties but rather one of the means of safeguarding the good order upon which they ultimately depend. The control of travel on the streets of cities is the most familiar illustration of this recognition of social need. Where a restriction of the use of highways in that relation is designed to promote the public convenience in the interest of all, it cannot be disregarded by the attempted exercise of some civil right which in other circumstances would be entitled to protection."

*Cox v. Louisiana, supra,* at pages 554-555 states:

"Governmental authorities have the duty and responsibility to keep their streets open and available for movement. A group of demonstrators could not insist upon the right to cordon off a street, or entrance to a public or private building, and allow no one to pass who did not agree to listen to their exhortations."

*Cox v. Louisiana, supra,* at page 574 states:

"Nothing we have said here or in No. 24, 379 U.S. 536, 13 L. Ed. 2d 471, 85 S. Ct. 453, is to be interpreted as sanctioning riotous conduct in any form or demonstrations, however peaceful their conduct or commendable their motives, which conflict with properly drawn statutes and ordinances designed to promote law and order, protect the community against disorder, regulate traffic, safeguard legitimate interests in private and public property, or protect the administration of justice and other essential governmental functions."

and at page 578 in a separate opinion by Mr. Justice Black:

'The First and Fourteenth Amendments, I think, take away from government, state and federal, all power

to restrict freedom of speech, press, and assembly *where, people have a right to be for such purposes.* This does not mean, however, that these amendments also grant a constitutional right to engage in the conduct of picketing or patrolling, whether on publically owned streets or on privately owned property. See Labor Board v. Fruit & Vegetable Packers & Warehousemen, 377 U.S. 58, 76, 12 L. Ed. 129, 141, 84 S. Ct. 1063 (concurring opinion). Were the law otherwise, people on the streets, in their homes and anywhere else could be compelled to listen against their will to speakers they did not want to hear. Picketing, though it may be utilized to communicate ideas, is not speech, and therefore is not of itself protected by the First Amendment. Hughes v. Superior Court, 339 U.S. 460, 464-466, 94 L. Ed. 985, 991, 992, 70 S. Ct. 718; Giboney v. Empire Storage & Ice Co., 336 U.S. 490, 93 L. Ed. 834, 69 S. Ct. 684; Bakery & Pastry Drivers & Helpers v. Wohl, 315 U.S. 769, 775-777, 86 L. Ed. 1178, 1183, 1184, 62 S. Ct. 816 (Douglas, J., concurring)."

and at page 584:

"And the crowds that press in the streets for noble goals today can be supplanted tomorrow by street mobs pressuring the courts for precisely opposite ends."

*Shuttleworth v. Birmingham, supra,* at page 95, Mr. Justice Douglas concurring states:

"The police power of a municipality is certainly ample to deal with all traffic conditions on the streets — pedestrian as well as vehicular. So there could be no doubt that if petitioner were one member of a group obstructing a sidewalk he could, pursuant to a narrowly drawn ordinance, be asked to move on and, if he refused, be arrested for the obstruction."

The series of segregation cases cited by Petitioners where this Court reversed convictions, ruling that basically unfair arrests and prosecutions followed peaceful as-

semblies or other innocent activity as in *Edwards v. South Carolina*, 372 U.S. 229, 9 L. ed. 2d 697, 83 S. Ct. 680 (1963); *Wright v. Georgia*, 373 U.S. 284, 10 L. ed. 2d 349, 83 S. Ct. 1240 (1963); *Henry v. Rock Hill*, 376 U.S. 776, 12 L. ed. 79, 84 S. Ct. 1042 (1964); *Cox v. Louisiana*, 379 U.S. 536, 13 L. ed. 471, 85 S. Ct. 453 (1965); *Shuttlesworth v. Birmingham*, 382 U.S. 87, 15 L. ed. 2d 176, 86 S. Ct. 211 (1965), and *Shuttlesworth v. City of Birmingham*, 394 U.S. 147 (1969), are readily distinguishable. This case differs from the convictions that were reversed in *Cantwell v. Connecticut, supra*, and *Terminiello v. Chicago*, 337 U.S. 1, 93 L. ed. 1131, 69 S. Ct. 894 (1949) where pure speech was the issue.

Other than arresting Petitioners and restoring the sidewalk to its unobstructed use by pedestrians, what alternative was available to police? Should a detail of police be assigned to protect Petitioners until they decided to move? This would insure Petitioners' safety, but the sidewalk blockage would require detouring the pedestrians into the street or have them cross to use the sidewalk on the other side of the street. If detoured into the street, motorists would be impeded and an accident might result in personal injuries. If pedestrians crossed this commercial artery in the middle of the block to avoid the sidewalk blockage, the risk of injury to pedestrians is increased. If pedestrians were required by police to cross the street at the block intersections north and south of the blockage, police might be subjected to criticism for heavy-handedness and arbitrariness in so diverting the public. And what if a pedestrian refused to be so diverted, could he be arrested for disorderly conduct?

Additionally, preventing the use of the sidewalk by pedestrians for the purpose for which it was intended, while permitting Petitioners to use the sidewalk for a pur-

pose for which it was not intended could be construed as a violation of a pedestrian's constitutional right. If the detour was a prolonged one, due to the desire of Petitioners to remain on the sidewalk for an indefinite period, would Waverly Laundromat, Miller's Liquors, the grocery store, Bar-B-Q, beauty shop, Waldorf Tuxedos and the other merchants not identifiable in the photographs of the scene (A. 167, 169, 170) have a basis for suit against the government, by virtue of the same Fourteenth Amendment now being utilized by Petitioners, for depriving these merchants of property without due process of law as their business would be affected because customers would be unable to enter these premises? Surely our laws do not contemplate such conditions.

This is why statutes such as the one in issue were passed — to protect society from public misconduct, conduct that society regards as being offensive to order and decency. Irrespective of any commendable motives Petitioners may have had, their conduct was unjustified and illegal.

## IV.

### NO CONSTITUTIONAL ERROR EXISTED IN THE TRIAL COURT'S CHARGE TO THE JURY.

The State of Maryland is one of two states in which the jury by constitutional provision[6] is judge of the law and the facts in criminal cases. This unique situation has been commented upon by this Court. *Brady v. Maryland*, 373

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[6] Article XV, § 5, Maryland Constitution:
"In the trial of all criminal cases, the Jury shall be the Judges of Law, as well as of fact, except that the Court may pass upon the sufficiency of the evidence to sustain a conviction."
Article I, § 19, Constitution of Indiana:
"In all criminal cases whatever, the jury shall have the right to determine the law and the facts."

U.S. 83, 10 L. ed. 2d 215, 83 S. Ct. 1194 (1963). The Maryland Rules of Procedure[7] provide for the issuance of *advisory* instructions by the trial judge and Rule 756(b) specifies how the instructions are to be given:

> "The court may and at the request of any party shall, give such advisory instructions to the jury as may correctly state the applicable law; the court may give its instructions either orally or in writing. The court need not grant any requested instruction if the matter is fairly covered by the instructions actually given. The court shall in every case in which instructions are given to the jury, instruct the jury that they are the judges of the law and that the court's instructions are advisory only."

Rule 756 (c) relates to any reference to evidence:

> "In giving any advisory instructions under section b of this Rule, the court may make such summation of or reference to the evidence as may be appropriate in order to present clearly to the jury the issue to be decided by them; provided the court instructs the jury that they are the judges of the facts and that it is for them to determine the weight of the evidence and the credit to be given to the witnesses."

Maryland permits counsel to argue to the jury the facts and the law even if contrary to the advisory instructions given by the trial judge and where the trial judge refuses to permit counsel to argue the law and facts reversals have resulted, *Wilson v. State*, 239 Md. 245, 210 A. 2d 824 (1965). Nothing in the Maryland law or court decisions prevented Petitioners from arguing any question on the facts or law to the jury, and any instructions issued by the judge were advisory only.

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[7] Rule 756.

*The Requested Instructions*

Both Instruction I (A. 12) and alternate Instruction I-A (A. 15) purport to specify how the Disorderly Conduct Statute may be violated, however both are incomplete. Instruction I is limited to disobeying a lawful police order, and while I-A sets out three situations that would be in violation of the statute, it does not include all situations. The words of the nisi prius jurist properly instructed the jury (A. 154-158), and, the following specific language which the judge used indicated when the Maryland Disorderly Conduct Statute would be violated:

> "In further amplification of the meaning of the charge, I instruct you that disorderly conduct is the doing or saying or both of that which offends, disturbs, incites or tends to incite a number of people gathered in the same area. It is conduct of such nature as to affect the peace and quiet of persons who may witness it and who may be disturbed or provoked to resentment because of it. A refusal to obey a policeman's command to move on when not to do so may endanger the public peace, *may* amount to disorderly conduct." (A. 155-156) (Emphasis supplied.)

Instruction II (A. 12) attempts to define a lawful order to "move along" only "if it is made to prevent an imminent public disturbance, and if it is reasonably necessary in order to prevent such a disturbance". This is covered by the language cited (re Instruction I and I-A) *supra*. Instruction III would have the jurist define to the jury "public disturbance" as "physical violence, or the attempt to use physical violence, by one person against another", and not merely "an episode of shouting or singing or name-calling not calculated to spill over into imminent violence". This definition is legally incomplete, and additionally, is covered by the language cited (re Instructions I and I-A) *supra*.

Instructions IV and IV-A (A. 13, 14) seek to refine the instances when the police might issue their request to "move on", however this aspect is also covered by the language cited (re Instructions I and I-A) *supra*.

Instructions V, VI, VII (A. 14, 15) are based on the "expression of views or ideas" theory which is totally unsupported by the evidence. The Maryland Court of Special Appeals in its opinion stated:

> "The evidence before the trial court clearly established that the arrests and charges resulted from appellants' refusal to cease their obstruction of the sidewalk and resultant public disturbance and because they had refused to comply with three lawful commands of a police officer. We further note that the standing demonstrators were not arrested. Since the evidence adduced below rejected any substance to the allegation that the arrests were predicated upon suppression of political views, the instructions were properly rejected." (A. 180 and 3 Md. App. 626, 629, 340 A. 2d 623).

Instruction VIII (A. 16, 17) relates to several jury questions including whether Petitioners were permitted to rise by police. The judge's instructions included these comments:

> "Now the defense in the case, as I understand it, is that the defendants take the position that they did not hear the command of the officers to get up and move along. If that is the case they had a right to sit on the sidewalk or in the case of one or two of them restrained there by the hand of the officer. That of course is for you to judge." (A. 157).

This point is apparently not pursued in this Petition.

It is submitted that a reading of the advisory instructions as given by the judge (A. 154-158 and pages 14, 15, *supra*) were fair, proper and amply covered the instruc-

tions requested by Petitioners in Requested Instructions I through IV-A, and VIII (A. 12-17). Petitioners' Requested Instructions V through VII (A. 14, 15) are all based on the "expression of views or ideas" theory which is unsupported by the evidence and were properly refused.

The fact that the six Petitioners were arrested and not the 35-40 peaceful demonstrators, is a salutary and explicit refutation of Petitioners' argument that the arrest was the result of an expression of their position on Vietnam. The testimony at the trial clearly established that the arrests arose directly, as stated by the Court of Special Appeals "out of the obstruction of the sidewalk which consequentially was causing a public disturbance and the specific refusal to comply with three lawful commands of the police officers (A. 174). This circumstance negated any inference that Petitioners' arrests were predicated upon a suppression of their political views. Petitioners' Requested Instructions V through VII were, therefore, inappropriate to this case and reliance on *Terminiello v. Chicago, supra*, was misplaced as *Terminiello* related to a freedom of speech situation. Terminiello was *speaking* in an "auditorium . . . filled to capacity with over eight hundred persons present. Others were turned away. Outside of the auditorium a crowd of about one thousand persons gathered to protest against the meeting. A cordon of policemen was assigned to the meeting to maintain order; but they were not able to prevent several disturbances. The crowd outside was angry and turbulent.

"Petitioner in his speech condemned the conduct of the crowd outside and vigorously, if not viciously, criticized various political and racial groups whose activities he denounced as inimical to the nation's welfare." *Terminiello v. Chicago, supra*, at p. 3. Requested Instructions V through

VII were appropriate in *Terminiello* but inappropriate in *Bacheller*.

Since the disorderly *actions* of the Petitioners caused the disturbance of the public peace and thus violated the Maryland Disorderly Conduct Statute, the Maryland trial judge's refusal to charge the jury as Petitioners requested was a proper exercise of judicial authority.

## CONCLUSION

The Maryland Statute (Article 27, § 123) is written in clear, plain and understandable terms. It holds no hidden meaning and is not vague to a man of ordinary intelligence. The statute was constitutionally applied to Petitioners and contrary to the argument advanced by Petitioners, their convictions were based solely on their disorderly actions not their political beliefs or views on the Vietnam issue. The instructions given by the trial judge were proper and it is, therefore, respectfully requested that their convictions be affirmed.

Respectfully submitted,

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FOOTNOTE 3A TO PAGE 35.

## DISORDERLY CONDUCT OR DISTURBING THE PEACE STATUTES OF OTHER STATES

*Code of Alabama, Title 14, § 119(1):*

"Any person who disturbs the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace, shall be guilty of a misdemeanor, . . ."

*Arizona Revised Statutes, Title 13, § 371:*

"A person is guilty of a misdemeanor who maliciously and wilfully disturbs the peace or quiet of a neighborhood, family or person by:

1. Loud or unusual noise. 2. Tumultuous or offensive conduct. 3. Threatening, traducing, quarreling, challenging to fight or fighting. 4. Applying any violent, abusive or obscene epithets to another . . ."

*Arkansas Statutes, Title 41, § 1432:*

"Any person who shall enter any public place of business of any kind whatsoever, or upon the premises of such public place of business, or any other public place whatsoever, in the State of Arkansas, and while therein or thereon shall create a disturbance, or a breach of the peace, in any way whatsoever, including, but not restricted to, loud and offensive talk, the making of threats or attempting to intimidate or any other conduct which causes a disturbance or breach of the peace . . . shall be guilty . . ."

*California Penal Code, Section 415:*

"Every person who maliciously and willfully disturbs the peace or quiet of any neighborhood or person, by loud or unusual noise, or by tumultuous or offensive conduct, or threatening, traducing, quarreling, challenging to fight, or fighting, . . . or use any vulgar, profane, or indecent language within the presence or hearing of women or chil-

dren, in a loud and boisterous manner, is guilty of a misdemeanor, . . ."

*Colorado Revised Statutes, Chapter 40, Article 8, § 1:*

"If any person maliciously or willfully disturb the peace or quiet of any neighborhood or family, by loud or unusual noises, or by tumultuous or offensive carriage, threatening, traducing, quarreling, challenging to fight, or fighting . . ."

*Connecticut General Statutes Annotated, Title 53, § 175:*

"Any person who, by offensive or disorderly conduct, annoys or interferes with any person in any place . . . by any disorderly conduct, . . . shall be . . ."

*Delaware Code Annotated, Title 11, Section 471:*

"Whoever brawls, quarrels, uses abusive, obscene, threatening or profane language in a loud tone of voice, . . . is guilty of disorderly conduct and shall be . . ."

*District of Columbia Code, Section 22-1121:*

"Whoever, with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby — (1) Acts in such a manner as to annoy, disturb, interfere with, obstruct, or be offensive to others; (2) congregates with others on a public street and refuses to move on when ordered by the police; (3) shouts or makes a noise either outside or inside a building during the nighttime to the annoyance or disturbance of any considerable number of persons; . . . shall be . . ." (this Section was held not to be unconstitutionally vague in *Jalbert v. District of Columbia*, 221 A. 2d 94. Although reversed on other grounds the U. S. Court of Appeals, District of Columbia Circuit, found it unnecessary to reach the vagueness issue. 387 F. 2d 233 and *Feeley v. District of Columbia*, 387 F. 2d 216 (1967).

*Florida Statutes Annotated, Title 44, Section 877.03:*

"Whoever commits such acts as are of a nature to corrupt the public morals, or outrage the sense of public de-

cency, or affect the peace and quiet of persons who may witness them, or engages in brawling or fighting, or engages in such conduct as to constitute a breach of the peace or disorderly conduct, shall be guilty . . ."

*Code of Georgia Annotated, Section 26-5501:*

"All other offenses against the public peace, not herein provided for, shall be misdemeanors."

*Hawaii Revised Statutes, Title 37, Section 772-2:*

"Any person who with intent to provoke a breach of the peace, or whereby a breach of the peace may be occasioned, commits any of the following acts shall be deemed to have committed the offense of disorderly conduct:

(1) Uses offensive, disorderly, threatening, abusive, or insulting language, conduct, or behavior;

(2) Congregates with others on a public street or sidewalk and refuses to move on when ordered by the police;

(3) By his actions causes a crowd to collect, except when lawfully addressing such a crowd;

(4) Shouts or makes a noise either outside or inside a building during the nighttime to the annoyance or disturbance of any three or more persons. . . ."

*Idaho Code, Title 18, Section 6409:*

"Every person who maliciously and willfully disturbs the peace or quiet of any neighborhood, family or person, by loud or unusual noise, or by tumultuous or offensive conduct, or by threatening, traducing, quarreling, challenging to fight or fighting, . . . or uses any vulgar, profane or indecent language within the presence or hearing of women or children, in a loud and boisterous manner, is guilty of a misdemeanor."

*Illinois Annotated Statutes, Chapter 38, Section 26-1*

"(a) A person commits disorderly conduct when he knowingly:

(1) Does any act in such unreasonable manner as to alarm or disturb another and to provoke a breach of the peace; or . . ." (see page 31, *supra* for discussion of *United States v. Woodard*, 376 F. 2d 136 (1967) where this statute held not unconstitutionally vague.)

*Indiana Statutes Annotated, Title 10, Section 10-1510:*

"Whoever shall act in a loud, boisterous or disorderly manner so as to disturb the peace and quiet of any neighborhood or family, by loud or unusual noise, or by tumultuous or offensive behavior, threatening, traducing, quarreling, challenging to fight or fighting, shall be deemed guilty of disorderly conduct, and upon conviction, . . ."

*Iowa Code Annotated, Title 35, Section 744.1:*

"If any person make or encite any disturbance in a tavern, store, or grocery, or at any election or public meeting, or other place where the citizens are peaceably and lawfully assembled, he shall be . . ."

*Kansas Criminal Code, Section 21-4101:*

"Disorderly conduct is, with knowledge or probable cause to believe that such acts will alarm, anger or disturb others or provoke an assault or other breach of the peace:

(a) Engaging in brawling or fighting; or

(b) Disturbing an assembly, meeting, or procession, not unlawful in its character; or

(c) Using offensive, obscene, or abusive language or engaging in noisy conduct tending reasonably to arouse alarm, anger or resentment in others.

Disorderly conduct is a class C misdemeanor."

*Kentucky Revised Statutes, Chapter 437.016:*

"(1) A person is guilty of disorderly conduct if, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he:

(a) Engages in fighting or in violent, tumultuous or threatening behavior; or

(b) Makes unreasonable noise; or

(c) In a public place uses abusive or obscene language, or makes an obscene gesture; or

(d) Without lawful authority, disturbs any lawful assembly or meeting of persons; or

(e) Obstructs vehicular or pedestrian traffic; or

(f) Congregates with other persons in a public place and refuses to comply with a lawful order of the police to disburse; or

(g) Creates a hazardous or physically offensive condition by any act that serves no legitimate purpose."

*Louisiana Revised Statutes, Title 14, Section 103:*

"Disturbing the Peace. Disturbing the peace is the doing of any of the following in such a manner as would foreseeably disturb or alarm the public: (1) Engaging in a fistic encounter; or (2) using of any unnecessarily loud, offensive, or insulting language; or (3) appearing in an intoxicated condition; or (4) engaging in any act in a violent and tumultuous manner by any three or more persons; or (5) holding of an unlawful assembly; or (6) interruption of any lawful assembly of people; or (7) commission of any other act in such a manner as to unreasonably disturb or alarm the public."

*Maine Revised Statutes, Title 17, Section 3953:*

"Any person who shall by any offensive or disorderly conduct, act or language annoy or interfere with any per-

son in any place or with the passengers of any public conveyance, although such conduct, act or language may not amount to an assault or battery, is guilty of a breach of the peace and shall be . . ."

*Annotated Laws of Massachusetts, Chapter 272, Section 53:*

"Stubborn children, runaways, common night walkers, both male and female, common railers and brawlers, persons who with offensive and disorderly act or language accost or annoy persons of the opposite sex, lewd, wanton and lascivious persons in speech or behavior, idle and disorderly persons, prostitutes, disturbers of the peace, keepers of noisy and disorderly houses and persons guilty of indecent exposure may be punished by . . ."

*Michigan Compiled Laws Annotated, Chapter 28, Section 750.167:*

"Any person of sufficient ability, who shall . . . be . . . engaged in any indecent or obscene conduct in any public place; . . . any person who shall be found jostling or roughly crowding people unnecessarily in a public place; . . . shall be deemed a disorderly person . . ."

*Minnesota Statutes Annotated, Chapter 609, Section 609.72:*

"Whoever does any of the following in a public or private place, knowing, or having reasonable grounds to know that it will, or will tend to, alarm, anger or disturb others or provoke an assault or breach of the peace, is guilty of disorderly conduct and may be sentenced to imprisonment for not more than 90 days or to payment of a fine of not more than $100:

(1) Engages in brawling or fighting; or

(2) Disturbs an assembly or meeting, not unlawful in its character; or

(3) Engages in offensive, obscene, or abusive language or in boisterous and noisy conduct tending reasonably to arouse alarm, anger, or resentment in others."

*Mississippi Code Annotated, Title 11, Section 2090.5:*

"Any person who shall enter any public place of business of any kind whatsoever, or upon the premises of such public place of business, or any other public place whatsoever, in the State of Mississippi, and while therein or thereon shall create a disturbance, or a breach of the peace, in any way whatsoever, including, but not restricted to, loud and offensive talk, the making of threats or attempting to intimidate, or any other conduct which causes a disturbance or breach of the peace or threatened breach of the peace, shall be guilty of . . ."

*Missouri Statutes, Title 38, Section 562.240:*

"If any person or persons shall willfully disturb the peace of any neighborhood, or of any family, or of any person, by loud and unusual noise or by offensive or indecent conversation, or by threatening, quarreling, challenging or fighting, every person so offending shall, upon conviction, . . ."

*Revised Codes of Montana, Title 11, Chapter 927, § 5039.24:*

"The city or town council has power: to prevent and punish intoxication, fights, riots, loud noises, disorderly conduct, obscenity, and acts or conduct calculated to disturb the public peace, or which are offensive to public morals, within the city or town, and within three miles of the limits thereof."

*Revised Statutes of Nebraska, Chapter 16, § 16-228:*

"A city of the first class by ordinance may provide for the punishment of persons disturbing the peace and good order of the city by clamor and noise, by intoxication, drunkenness, fighting, or using obscene or profane language in the streets or other public places, or otherwise violating the public peace by indecent and disorderly conduct, or by lewd or lascivious behavior."

*Nevada Revised Statutes, Chapter 203, Section 203.010:*

"Disturbing the peace. Every person who shall maliciously and willfully disturb the peace or quiet of any neigh-

borhood or family by loud or unusual noises, or by tumultuous and offensive conduct, threatening, traducing, quarreling, challenging to fight, or fighting, shall be guilty of a misdemeanor."

*New Hampshire Revised Statutes, Title LVIII, Chapter 570, Section 570:1:*

"Brawls, etc. No person shall make a brawl, nor, in any street or other public place, be guilty of rude, indecent, or disorderly conduct, or insult or wantonly impede a person passing therein, or play therein at any game."

*New Jersey Statutes Annotated, Title 2A, Chapter 169-3:*

"Arrest of disorderly person without process. Whenever an offense is committed in his presence, any constable or police officer shall, and any other person may, apprehend without warrant or process any disorderly person, and take him before any magistrate of the county where apprehended."

*New Mexico Statutes, Chapter 40A, Article 20-1:*

"Disorderly conduct. Disorderly conduct consists of: a. engaging in violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct which tends to disturb the peace; . . . c. maliciously disturbing, threatening or, in an insolent manner, intentionally touching any house occupied by any person."

*New York Penal Law, Section 240.20:*

"Disorderly conduct. A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof: 1. He engages in fighting or in violent, tumultuous or threatening behavior; or 2. he makes unreasonable noise; or 3. in a public place, he uses abusive or obscene language, or makes an obscene gesture; or 4. without lawful authority, he disturbs any lawful assembly or meeting of persons; or 5. he obstructs vehicular or pedestrian traffic;

or 6. he congregates with other persons in a public place and refuses to comply with a lawful order of the police to disperse; or 7. he creates a hazardous or physically offensive condition by any act which serves no legitimate purpose."

*General Statutes of North Carolina, Chapter 14, Article 22, Section 14-132:*

"Disorderly conduct in and injuries to public buildings. — If any person shall make any rude or riotous noise or be guilty of any disorderly conduct in or near any of the public buildings of the State, or of any county or municipality, or shall write or scribble on, mark, deface, besmear, or injure the walls of any of the public buildings of the State or of any county or municipality, of any statute or monument, or shall do or commit any nuisance in or near any public building of the State or of any county or municipality, he shall be guilty of a misdemeanor. . . ."

*North Dakota Century Code, Title 12, Chapter 12-19-01:*

"Injury to public peace — Misdemeanor. — Every person who willfully and wrongfully commits any act which grossly disturbs the public peace, although no punishment is expressly prescribed, is guilty of a misdemeanor."

*Ohio Revised Code, Title 37, Chapter 3773.22:*

"Prohibition against being found intoxicated. No person shall be found in a state of intoxication or, being intoxicated, shall disturb the peace and good order, or shall conduct himself in a disorderly manner. . . ."

*Oklahoma Statutes, Title 11, Section 1004:*

Grants power to towns to restrain and prohibit disorderly conduct. In 1968, Title 21, Section 1362 was amended making it a misdemeanor "if any person shall willfully or maliciously disturb, either by day or night, the peace and quiet of any city of the first class, town, village, neighborhood or family by loud or unusual noise, or by abusive, violent, obscene or profane language, whether

addressed to the party so disturbed or some other person, . . . "

*Oregon Revised Statutes 166.060:*

Defines those guilty of vagrancy as "(f) any person who conducts himself in a . . . disorderly manner . . . in a public place or upon any public highway . . . or place whereby the peace or quiet of the neighborhood or vicinity may be disturbed."

*Pennsylvania Statutes, Title 18, Section 4406:*

"Whoever wilfully makes or causes to be made any loud, boisterous and unseemly noise or disturbance to the annoyance of the peaceable residents near by, or near to any public highway, road, street, lane, alley, park, square, or common, whereby the public peace is broken or disturbed or the traveling public annoyed, is guilty of the offense of disorderly conduct . . ."

*Laws of Puerto Rico, Title 33, Section 1439:*

"Every person who maliciously and wilfully disturbs the peace or quiet of any neighborhood or person, by . . . offensive conduct, is guilty of a misdemeanor . . ."

*Rhode Island, Title 11, Chapter 45-1:*

"Vagrants and Disorderly persons—: . . . every . . . disorderly person, shall be imprisoned . . ."

*South Carolina, Title 16, Section 558:*

"Public disorderly conduct or shooting, etc. — Any person who shall (a) be found . . . conducting himself in a disorderly or boisterous manner, . . . shall be guilty of a misdemeanor . . ."

*South Dakota, Title 22, Chapter 22-13-5:*

"Disorderliness or intoxication in unincorporated town. Any person guilty of disorderly conduct . . . arising from

drunkenness or otherwise, shall upon arrest . . ." Additionally Chapt. 22-16-33 makes homicide justifiable "when necessarily committed in attempting by lawful ways and means . . . in lawfully keeping and preserving the peace."

*Tennessee Code, Title 39, Section 39-1213:*

"Disorderly conduct declared a misdemeanor — Definition — Penalty. — It shall be a misdemeanor for any person to engage in disorderly conduct, which is defined as the use of rude, boisterous, offensive, obscene or blasphemous language in any public place; or to make or to countenance or assist in making any improper noise, disturbance, breach of the peace, or diversion, or to conduct oneself in a disorderly manner, in any place to the annoyance of other persons."

*Texas Penal Code, Title 9, Art. 474: Disorderly Conduct. Section 1:*

"No person, acting alone or in concert with others, may engage in disorderly conduct. Disorderly conduct consists of any of the following: . . . (2) interfering with the peaceful and lawful conduct of persons in or about their homes or public places under circumstances in which such conduct tends to cause or provoke a disturbance; or . . . (5) in a public or private place engages in violent, abusive, indecent, profane, boisterous, unreasonably loud, or otherwise disorderly conduct under circumstances in which such conduct tends to cause or provoke a disturbance; or . . ."

*Utah Code, Title 76, Chap. 43-3:*

Defines "Public nuisance" as a crime against the order and economy of the state, and consists in unlawfully doing any act, or omitting any act, or omitting to perform any duty, which act or omission either: "(1) Annoys, . . . the comfort, . . . of three or more persons; or, (2) offends public decency; or, (3) unlawfully interferes with, obstructs or tends to obstruct, . . . any street or highway . . ."

*Vermont, Title 13, Section 1021:*

Breach of the peace generally — A person who disturbs or breaks the public peace: ". . . (2) By any disorderly act or language, which does not amount to assault or battery, or destruction of property, shall be . . ."

*Virgin Islands, Title 14, Section 622:*

Disturbing the peace; . . . "Whoever maliciously and willfully — (1) disturbs the peace or quiet of any village, town, neighborhood or person, by loud or unusual noise, or by tumultuous offensive conduct, . . . or (2) on the public streets, or upon the public highways, . . . uses any vulgar . . . language in a loud and boisterous manner — shall be . . ."

*Virginia, Effective April 2, 1968, repealed existing statutes and enacted Title 18.1, Section 254.01 through 254.11 pertaining to Riots, Routs and Unlawful Assemblies; Disorderly Conduct. Unlawful assembly as used in this article is defined (18.1-254.1.(c)):*

". . . whenever three or more persons assemble without authority of law and for the purpose of . . . exciting public alarm or disorder, such assembly is an unlawful assembly." 18.1-254.4 provides that every person except public officers and persons assisting them, who remain present at an unlawful assembly after having been lawfully warned to disperse, shall be guilty of a misdemeanor.

*Washington Code 9.87.010:*

Vagrancy classifies as a vagrant every ". . . (7) lewd, disorderly or dissolute person; or . . ." The Supreme Court of Washington defined "disorderly" as contrary to rules of good order and behavior; violative of the public peace or good order; turbulent, riotous, or indecent. State v. Levin, 67 WN 2d 988, 410 P. 2d 901 (1966).

*West Virginia Code, Section 61-6-1:*

Prior to the 1969 amendment provided that it was the duty of *Judges* and *justices* to suppress riots, routs and unlawful assemblages within their jurisdictions and "*to go among, or as near as may be with safety,* to persons riotously, tumultuously, or unlawfully assembled, and in the name of the law command them to disperse; and if they shall not thereupon immediately and peaceably disperse, such judge or justice giving the command, and any other present, shall command the assistance of all persons present, and of the sheriff of the county, with his posse if need be, in arresting and securing those so assembled . . ." In 1969 judges and justices were relieved of this duty by the legislature and members of the department of public safety, sheriff and mayor were entrusted with this assignment.

*Wisconsin, Chapter 947.01 disorderly conduct:*

"Whoever does any of the following . . . (1) In a public or private place, engages in violent, abusive, indecent, profane, boisterous, unreasonably loud, or otherwise disorderly conduct under circumstances in which such conduct tends to cause or provoke a disturbance; or . . ." (see page 34, this Brief re consideration of this statute in *Zwicker v. Boll,* 391, U.S. 353 (1968)).

*Wyoming, Title 6, Section 6-114, Breach of the Peace:*

"Whoever by any loud or unnecessary talking, hollooing, or by any threatening, abusive, profane or obscene language, or violent actions, or by any other rude behavior, intercepts or disturbs the peace of any community in this state or of any of the inhabitants thereof, shall be guilty of a breach of the peace and upon conviction . . ."

## AMERICAN LAW INSTITUTE
## MODEL PENAL CODE

### Offenses Against Public Order and Decency

### Article 250. Riot, Disorderly Conduct, and Related Offenses

Section 250.1. Riot; Failure to Disperse.

(1) *Riot.* A person is guilty of riot, a felony of the third degree, if he participates with [two] or more others in a course of disorderly conduct:

(a) with purpose to commit or facilitate the commission of a felony or misdemeanor;

(b) with purpose to prevent or coerce official action; or

(c) when the actor or any other participant to the knowledge of the actor uses or plans to use a firearm or other deadly weapon.

(2) *Failure of Disorderly Persons to Disperse Upon Official Order.* Where [three] or more persons are participating in a course of disorderly conduct likely to cause substantial harm or serious inconvenience, annoyance or alarm, a peace officer or other public servant engaged in executing or enforcing the law may order the participants and others in the immediate vicinity to disperse. A person who refuses or knowingly fails to obey such an order commits a misdemeanor.

Section 250.2. Disorderly Conduct.

(1) *Offense Defined.* A person is guilty of disorderly conduct if, with purpose to cause public inconvenience annoyance or alarm, or recklessly creating a risk thereof, he:

(a) engages in fighting or threatening, or in violent or tumultuous behavior; or

(b) makes unreasonable noise or offensively coarse utterance, gesture or display, or addresses abusive language to any person present; or

(c) creates a hazardous or physically offensive condition by any act which serves no legitimate purpose of the actor.

"Public" means affecting or likely to affect persons in a place to which the public or a substantial group has access; among the places included are highways, transport facilities, schools, prisons, apartment houses, places of business or amusement, or any neighborhood.

(2) *Grading.* An offense under this section is a petty misdemeanor if the actor's purpose is to cause substantial harm or serious inconvenience, or if he persists in disorderly conduct after reasonable warning or request to desist. Otherwise disorderly conduct is a violation.

Section 250.7. Obstructing Highways and Other Public Passages.

(1) A person, who, having no legal privilege to do so, purposely or recklessly obstructs any highway or other public passage, whether alone or with others, commits a violation, or, in case he persists after warning by a law officer, a petty misdemeanor. "Obstructs" means renders impassable without unreasonable inconvenience or hazard. No person shall be deemed guilty or recklessly obstructing in violation of this Subsection solely because of a gathering of persons to hear him speak or otherwise communicate, or solely because of being a member of such a gathering.

(2) A person in a gathering commits a violation if he refuses to obey a reasonable official request or order to move:

(a) to prevent obstruction of a highway or other public passage; or

(b) to maintain public safety by dispersing those gathered in dangerous proximity to a fire or other hazard.

An order to move, addressed to a person whose speech or other lawful behavior attracts an obstructing audience, shall not be deemed reasonable if the obstruction can be readily remedied by police control of the size or location of the gathering.